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Treasurer Fong Releases AG Opinion on Marks-Roos Financing *Fong Urges SEC To Investigate "Illegal" Practices*

SACRAMENTO--State Treasurer Matt Fong today released an Attorney General's opinion which confirms that there are illegal uses of Joint Powers Authorities which skirt California's Marks-Roos Bond Pooling Act by making illegal payments of bond proceeds to authority members, using bond proceeds to retire private debts, and failing to identify the actual project beneficiaries.

Following a meeting of the California Debt Advisory Commission, where he heard concerns from public finance professionals, Fong said he sent the state attorney general a letter requesting an opinion pertaining to specific uses of the Marks-Roos Local Bond Pooling Act of 1985 which might be illegal.

"Abuse of the Mark-Roos Act threatens the integrity of the municipal market, and by this opinion, the state attorney general confirms our suspicions," Fong said. "Now we need to take the necessary steps beyond this opinion to prevent further abuse from taking place."

Fong called for a broader investigation by the Securities and Exchange Commission, the Attorney General's office, the California State Bar Association and the Municipal Securities Rulemaking Board. At the CDAC meeting, the Commission reviewed and adopted disclosure guidelines that would encourage more consideration of the processes for approving land-based debt and more adequate disclosure of specific projects.

"Issuers can and must ensure that projects financed with debt issued in their name are both economically viable and legal under state law. This will protect the future homeowners that will live in these projects from higher taxes, unsatisfactory neighborhoods and financial disaster. It also will help investors in these projects get a realistic view of the risks involved and better ongoing information about project performance," Fong said.

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“If federal and state securities laws are not enforced against those responsible for these transactions, others may be encouraged to undertake more creative, risky and illegal transactions in the future,” Fong said.

“We are all aware that many of these deals are not living up to their promises, and many are in default or very close to it. We have heard from investors in these projects who have lost money, and from homeowners in these projects with no real prospects for the neighborhoods they expected and little chance of selling their homes,” Fong said.

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